

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No.: 18-C-1022

Related Case: 10-CR-273

STEVEN J. NIGG,

Defendant.

SCREENING ORDER

In January 2011, Steven J. Nigg pleaded guilty to Possession of a Firearm by a Felon under the Armed Career Criminal Act (ACC), in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). On June 6, 2011, Nigg was sentenced to the mandatory minimum 180 months in the custody of the Bureau of Prisons. The conviction and sentence were affirmed on appeal. *See United States v Nigg*, 667 F.3d 929 (7th Cir. 2012). A Petition for Writ of Certiorari was denied by the United States Supreme Court.

On December 26, 2012, Nigg filed a petition for post-conviction relief pursuant to 28 U.S.C. § 2255. An amended petition was ultimately dismissed in response to Nigg's motion to withdraw his petition. Nigg has now filed a new petition for relief under 28 U.S.C. § 2255, claiming that the armed robbery convictions that served as predicate offences for application of the ACC are not violent offences within the meaning of that statute in light of a recent Ninth Circuit decision. *See United States v Jones*, 877 F.3d 884 (9th Cir 2017). Based upon the recent developments in the law concerning the ACC and the 9th Circuit's decision concerning the Arizona armed robbery statute, Nigg contends that he is entitled to relief.

From my preliminary review required by Rule 4 of the Rules Governing Section 2255 Proceedings, I am unable to determine from the face of his petition that Nigg is not entitled to relief. Depending on whether the dismissal of his earlier petition was with prejudice, he may need to obtain a certification from the Seventh Circuit in order to bring a second or successive motion under §2255. *See* 28 U.S.C. § 2255(h). But given the recent changes in the law, such a certification may well be granted, if required. In any event, because I cannot determine from the face of the petition that Nigg is not entitled to relief, the Government is directed to respond to his motion within the next 30 days, or on or before August 6, 2018.

SO ORDERED this 5th day of July, 2018.

s/ William C. Griesbach

William C. Griesbach, Chief Judge
United States District Court - WIED